

AMENDED IN SENATE SEPTEMBER 4, 2009

AMENDED IN SENATE AUGUST 26, 2009

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN SENATE JUNE 11, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 471

Introduced by Assembly Member Nava *Members Arambula and Nava*
(Coauthors: Assembly Members Caballero, Coto, and Solorio)

February 24, 2009

~~An act to amend Sections 11040 and 11042 of, and to add Sections 11042.1, 11042.2, 11042.3, and 11046 to, the Government Code, and to amend Section 1341.6 of the Health and Safety Code, relating to legal services. An act to amend Section 79190 of the Water Code, relating to water management.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 471, as amended, ~~Nava Arambula. Legal services. Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Act: eligible project.~~

The Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Act (bond act), approved by the voters as Proposition 13 at the March 7, 2000, statewide primary election, authorizes the issuance and sale of a total of \$1,970,000,000 in general obligation bonds. The bond act requires that \$630,000,000 of the

proceeds from the sale of those bonds be allocated for purposes of water supply reliability projects, including \$250,000,000 for eligible projects that carry out the CALFED Bay-Delta plan. For these purposes, the bond act defines “eligible project” as a project that (1) is identified in a specified CALFED environmental impact statement/environmental impact report (CALFED EIS/EIR), and (2) is within at least one of 6 prescribed categories of projects. Among these categories is a project that constructs a permanent barrier at the head of Old River to improve fish migration and other permanent barriers in the south Sacramento-San Joaquin Delta channels to improve water quality and water level for local diversions. The bond act allocates \$40,000,000 for the purposes of that project.

This bill would expand the definition of “eligible project” for purposes of these provisions of the bond act to mean a project that is either (1) identified in the CALFED EIS/EIR, or (2) within at least one of the 6 prescribed categories of projects. The bill also would change the barrier improvement project category to, instead, include a project that constructs a barrier to protect fish and other barriers in Sacramento-San Joaquin Delta channels to improve water quality and water level for local diversions.

The bill would provide for the submission of its provisions as a proposed amendment of a general obligation bond act to the voters at the next statewide election in accordance with specified law.

~~Existing law requires certain state entities to obtain written consent from the Attorney General before employing legal counsel in any judicial proceeding. Existing law exempts from those requirements certain state entities.~~

~~This bill would recast these provisions, define terms for their purposes, and state several factors the Attorney General may consider when considering consenting to a state agency, commissioner, or officer employing in-house counsel or outside counsel, as defined. The bill would make other conforming changes.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 79190 of the Water Code is amended to
2 read:

1 79190. Unless the context otherwise requires, the following
2 definitions govern the construction of this article:

3 (a) “CALFED Bay-Delta Program” or “program” means the
4 undertaking by CALFED pursuant to the Framework Agreement
5 dated June 20, 1994, to develop a long-term solution to water
6 management, environmental, and other problems in the bay-delta
7 watershed by means of a programmatic environmental impact
8 statement/environmental impact report.

9 (b) “CALFED EIS/EIR” means the final programmatic
10 environmental impact statement/environmental impact report
11 prepared by CALFED.

12 (c) “CALFED stage 1 action” means an action identified in the
13 preferred alternative of the CALFED EIS/EIR as an action intended
14 for implementation during stage 1 of Phase III of the CALFED
15 Bay-Delta Program.

16 (d) (1) “Eligible project” means a demonstration project, subject
17 to the CALFED adaptive management principle that requires an
18 assessment of the performance of the demonstration projects in
19 order to determine which projects are successful in achieving the
20 goals of the program.

21 (2) “Eligible project” means a project that meets ~~both~~ *either* of
22 the following requirements:-

23 (A) The project is identified in the CALFED EIS/EIR as a
24 CALFED stage 1 action.

25 (B) The project does one or more of the following:

26 (i) Constructs treatment facilities or relocates discharge facilities
27 for agricultural drainage generated within the delta to improve
28 water quality in the delta or the quality of water that is transported
29 from the delta.

30 (ii) Constructs facilities to control waste discharges that
31 contribute to low dissolved oxygen and other water quality
32 problems in the lower San Joaquin River and the south delta.

33 (iii) Constructs fish facilities for the State Water Project or the
34 Central Valley Project intakes in the south delta, such as facilities
35 for fish screens, fish handling, and fish passage, or modifications
36 to intake structures or other facilities, to reduce losses of any life
37 stages of fish to water diversions in the San Joaquin River and the
38 delta in accordance with paragraph (1) of Section (C) of Chapter
39 IV of the board’s 1995 water quality control plan.

(iv) Constructs a permanent barrier at the head of Old River to improve to protect fish migration and other permanent barriers in the south delta channels to improve water quality and water level for local diversions.

(v) Constructs facilities to control drainage from abandoned mines that adversely affect water quality in the bay-delta.

(vi) Constructs a permanent barrier at Grantline Canal to improve water quality and water levels for local diversion.

(e) “Subaccount” means the Bay-Delta Multipurpose Water Management Subaccount created by Section 79194.

SEC. 2. Section 1 of this act shall take effect only upon approval by the voters of the section as an amendment to the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Act.

SEC. 3. Section 1 of this act shall be submitted to the voters at the next statewide election in accordance with provisions of the Government Code and the Elections Code governing the submission of a statewide measure to the voters.

~~SECTION 1. Section 11040 of the Government Code is amended to read:~~

~~11040. (a) This article does not affect the right of any state agency or employee to employ counsel in any matter of the state, after first having obtained the written consent of the Attorney General.~~

~~(b) It is the intent of the Legislature that overall efficiency and economy in state government be enhanced by employment of the Attorney General as counsel for the representation of state agencies and employees in judicial or other proceedings.~~

~~The Legislature finds that it is in the best interests of the people of the State of California that the Attorney General be provided with the resources needed to develop and maintain the Attorney General’s capability to provide competent legal representation of state agencies and employees in any judicial proceeding.~~

~~(c) Except with respect to employment by the state officers and agencies specified by title or name in Section 11041 or when specifically waived, exempted, or excepted by statute other than Section 11041, the written consent of the Attorney General is required prior to employment of outside counsel for representation of any state agency or employee.~~

1 ~~SEC. 2. Section 11042 of the Government Code is amended~~
2 ~~to read:~~

3 ~~11042. A state agency, commissioner, or officer may employ~~
4 ~~in-house counsel to provide legal services. However, except as~~
5 ~~otherwise specifically provided in this article or another statute,~~
6 ~~only the Attorney General, or one of his or her assistants or~~
7 ~~deputies, shall represent a state agency, commissioner, or officer~~
8 ~~in relation to a judicial or other proceeding in which the agency,~~
9 ~~commissioner, or officer is interested, or is a party as a result of~~
10 ~~office or official duties, unless express written consent is given by~~
11 ~~the Attorney General to employ in-house counsel.~~

12 ~~SEC. 3. Section 11042.1 is added to the Government Code, to~~
13 ~~read:~~

14 ~~11042.1. Nothing in this article prohibits a state agency,~~
15 ~~commissioner, or officer from obtaining legal services from the~~
16 ~~Attorney General that are unrelated to a judicial or other~~
17 ~~proceeding.~~

18 ~~SEC. 4. Section 11042.2 is added to the Government Code, to~~
19 ~~read:~~

20 ~~11042.2. When the Attorney General consents to a state agency,~~
21 ~~commissioner, or officer employing in-house counsel or outside~~
22 ~~counsel in a judicial or other proceeding, the Attorney General~~
23 ~~may intervene in the proceeding or appear as amicus curiae to the~~
24 ~~extent permitted by the court.~~

25 ~~SEC. 5. Section 11042.3 is added to the Government Code, to~~
26 ~~read:~~

27 ~~11042.3. In determining whether to give consent to a state~~
28 ~~agency, commissioner, or officer to employ in-house counsel or~~
29 ~~outside counsel in a judicial or other proceeding, and the extent~~
30 ~~of such consent, the Attorney General may consider the factors of~~
31 ~~conflicts of interest, the staffing needs of the Office of the Attorney~~
32 ~~General, and the availability of subject matter expertise.~~

33 ~~SEC. 6. Section 11046 is added to the Government Code, to~~
34 ~~read:~~

35 ~~11046. For purposes of this article and unless otherwise~~
36 ~~specifically stated, the following definitions shall apply:~~

37 ~~(a) "In-house counsel" means a licensed attorney employed in~~
38 ~~state service by a state agency, commissioner, or officer.~~

39 ~~(b) "Judicial or other proceeding" means litigation in a civil~~
40 ~~court, an administrative adjudicatory proceeding governed by the~~

1 ~~Administrative Procedure Act (Chapter 4 (commencing with~~
2 ~~Section 11370)) or by the United States Administrative Procedure~~
3 ~~Act (5 U.S.C. Sec. 551 et seq.), or an arbitration proceeding.~~
4 ~~Administrative adjudicatory proceedings before the State Personnel~~
5 ~~Board, the Department of Personnel Administration, or the~~
6 ~~Unemployment Insurance Appeals Board are exempt from this~~
7 ~~definition.~~

8 (e) “Outside counsel” means a licensed attorney engaged in the
9 private practice of law.

10 SEC. 7. ~~Section 1341.6 of the Health and Safety Code is~~
11 ~~amended to read:~~

12 ~~1341.6. (a) The Attorney General shall render to the director~~
13 ~~opinions upon all questions of law, relating to the construction or~~
14 ~~interpretation of any law under the director’s jurisdiction or arising~~
15 ~~in the administration thereof, that may be submitted to the Attorney~~
16 ~~General by the director and upon the director’s request shall act~~
17 ~~as the attorney for the director in actions and proceedings brought~~
18 ~~by or against the director under or pursuant to any provision of~~
19 ~~any law under the director’s jurisdiction.~~

20 (b) ~~Sections 11042, 11042.1, 11042.2, 11042.3, and 11043 of~~
21 ~~the Government Code do not apply to the Director of the~~
22 ~~Department of Managed Health Care or to the Department of~~
23 ~~Managed Health Care.~~

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26 CORRECTIONS:

27 Digest—Vote key line.
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